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WaltzerWiygulGarside
LAW FIRM

Robert B. Wiygul
Partner

robert@wwglaw.com

October 19, 2017

INEOS Americas LLC
d/b/a INEOS Oxide
c/o C T Corporation System, Registered Agent
3867 Plaza Tower Dr
Baton Rouge, LA 70816

Morton Aubrey, Manager
Elaine Schields, Manager
INEOS Americas LLC
d/b/a INEOS Oxide
7770 Rangeline Rd
Theodore, AL 36582

The Dow Chemical Company
c/o C T Corporation System, Registered Agent
3867 Plaza Tower Dr
Baton Rouge, LA 70816

James Fitterling, President
The Dow Chemical Company
2030 Dow Center
Midland, MI 48674

Re: Notice of Intent to File Citizen Suit Under Section 505(b)(1) of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1365(b)

Dear Mr. Aubrey, Ms. Schields & Mr. Fitterling:

This letter is to give you notice that the Louisiana Environmental Action Network, Inc. ("LEAN") and the Lower Mississippi RIVERKEEPER® intend to sue INEOS Americas LLC doing business as INEOS Oxide ("INEOS Oxide") and The Dow Chemical Company ("Dow")[1] for contributing to the pollution of the Mississippi River on numerous occasions, in violation of the terms of the applicable discharge permit issued under the Louisiana Pollution Discharge

[1] Even though INEOS Oxide is the permit holder and operator of all three plants, Dow is both strictly and jointly and severally liable for INEOS Oxide's permit violations under the Clean Water Act as an owner of two of the manufacturing plants subject to the permits.

Elimination System ("LPDES Permit").[2] These violations relate to one organic chemical manufacturing plant—the Ethanolamines Plant—that INEOS Oxide owns and operates, and two organic chemical manufacturing plants—the Glycol Ethers Plant and the Polyethylene Glycol Plant—that Dow owns and INEOS Oxide operates. All three plants are located at 21255A Highway 1 South, Plaquemine, Louisiana ("the Facility"), covering approximately 17 acres of the Dow, Louisiana Operations Plaquemine Facility. The violations documented in this notice constitute continuing violations of sections 301 and 402 of the federal Clean Water Act, 33 U.S.C. §§ 1311, 1342.

Pursuant to INEOS Oxide's permit, the Facility may not discharge pollutant-containing wastewater into the Mississippi River unless it complies with the permit's terms. In particular, in order to protect public health and the environment, the LPDES Permit contains maximum limits for various constituents, as set by the Louisiana Department of Environmental Quality ("LDEQ"). Moreover, in order to guarantee proper compliance, the permit requires INEOS Oxide to employ best management practices, which necessarily include following proper monitoring and reporting procedures and maintaining the Facility in such a way to avoid spills.

By repeatedly discharging wastewater containing levels of pollutants higher than those allowed by the LPDES Permit, failing to conduct proper sampling and reporting on multiple occasions, and spilling more than 200 pounds of flammable product, INEOS Oxide has exposed the public and the environment to an unnecessary and unacceptable risk of harm. INEOS Oxide is in violation of the Clean Water Act and must take immediate action to come into compliance.

I. Identity of Complainants

A. Louisiana Environmental Action Network, Inc.

LEAN is a Baton Rouge-based umbrella organization established to promote and protect the health of Louisiana's natural environment for the use and enjoyment of the people of Louisiana. In executing its purpose, LEAN ensures that the laws and regulations of the State, intended to preserve and enhance its natural resources and environmental quality, are diligently followed in letter and in spirit. LEAN has a particular interest in the preservation and restoration of water quality in the rivers and streams of Louisiana, and in protecting its members from exposure to public health risks. In addition, LEAN's interest in water quality flows directly from the personal interests of its members who own property, live, and/or work adjacent to the affected portion of the Mississippi River, and who use those waters that receive the contaminated discharges from INEOS Oxide's Facility for recreation, boating, swimming, and/or aesthetic enjoyment. Water pollution and threats to water quality from INEOS Oxide's Facility, and its repeated violation of its permit directly harm these members of LEAN. LEAN can be reached as follows:

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[2] As relevant to the violations in this notice, two different versions of Permit No. LA0115100 have applied: the first version took effect in 2009, and the current version superseded the old version effective May 1, 2016.

Louisiana Environmental Action Network, Inc.
P.O. Box 66323
Baton Rouge, LA 70896
Phone: (225) 928-1315

B. Lower Mississippi RIVERKEEPER®

The Lower Mississippi RIVERKEEPER® ("LMR") works with local communities to address the polluted state of the Mississippi River, which travels through 31 states and drains 2,350 square miles, making it one of the most endangered rivers in the United States. LMR energizes current activists to participate in environmental decisions, and educates the public and government leaders about environmental challenges and economic opportunities regarding the Mississippi River and how reduced water pollution benefits everyone. As part of its work, LMR monitors water quality, investigates reported pollution-related incidents, and seeks to compel polluters to comply with the Clean Water Act to reduce pollution in the River for the benefit of surrounding communities' health and the health of the environment. LMR is a member of LEAN.

Additionally, LMR is part of the international Waterkeeper Alliance, which provides a way for communities to stand up for their right to clean water and for the wise and equitable use of water resources, both locally and globally. The vision of the Waterkeeper movement is for fishable, swimmable and drinkable waterways worldwide, which the organization seeks to achieve through grassroots advocacy.

Members of LMR own property, live, and/or work adjacent to the affected portion of the Mississippi River, and use those waters that receive the contaminated discharges from INEOS Oxide's Facility for recreation, boating, swimming, and/or aesthetic enjoyment. Water pollution and threats to water quality from INEOS Oxide's Facility, and its repeated violation of its permit directly harm these members of LMR. LMR can be reached as follows:

Lower Mississippi RIVERKEEPER®
c/o The Louisiana Environmental Action Network
P.O. Box 66323
Baton Rouge, LA 70896
Phone: 225-928-1315

II. Effect of the Violations on Public Resources

A. The Mississippi River

The LPDES Permit allows INEOS Oxide to discharge limited quantities of pollutants through outfalls that eventually discharge into the Mississippi River. As LMR recognizes:

> The Mississippi River Basin is home to 1.5 million people, and over 350 industrial and municipal facilities are located adjacent to the River within the state of Louisiana. Approximately 175 of these facilities discharge wastewater into the river under the authority of state/federal permits, and of these approximately 120 facilities are located between Baton Rouge and New Orleans. Noncompliance with wastewater discharge permits by a large number of facilities along the River is widespread . . . In addition to the industrial pollution[,] when the Mississippi River flows into Louisiana it already contains a variety of chemicals including the herbicide Atrazine, which originates in stormwater runoff from agricultural fields in mid-western states and presents a potential health hazard. This places a particular burden on the Communities from Ascension Parish to the mouth of the Mississippi River that use surface water as their only source of drinking water.[3]

Thus, any permit violations by INEOS Oxide cannot be viewed in isolation but also have a deleterious cumulative effect on the health of the Mississippi River and neighboring communities. Each violation compounds the preexisting threat to the residents and environment of the lower Mississippi River, which is impaired due to the activities of many industrial and agricultural users.

III. Legal Overview

Section 301 of the Clean Water Act prohibits the "discharge of any pollutant by any person" without proper authorization, such as in compliance with the terms of a permit issued under Section 402. 33 U.S.C. § 1311(a). Section 402 establishes the National Pollutant Discharge Elimination System, a permitting program regulating the discharge of pollutants by industrial facilities, and provides for the issuance of such permits by individual States. 33 U.S.C. § 1342(h). In Louisiana, the issuance of such permits (known as LPDES permits) has been delegated to the Louisiana Department of Environmental Quality. Part III.A.2 of the LPDES Permit mandates compliance "with all conditions," making "[a]ny permit noncompliance . . . grounds for enforcement action" and a violation of both the Clean Water Act and the Louisiana Environmental Quality Act.

Congress provided for enforcement of the discharge limitations in the Clean Water Act through citizen suits like the present one. Title 33 U.S.C. § 1365 permits a citizen to bring a claim for a violation of any effluent standard or limitation under the Act. Violation of an LPDES permit is a violation of an effluent standard or limitation and is actionable under the citizen suit provision of the Clean Water Act. Please note that month showing a violation of a parameter constitutes a separate violation of that parameter for each day during the month, or until the next valid test result demonstrating compliance is submitted.

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[3] http://lmrk.org/the-mississippi-river/

IV. Compliance History

LDEQ issued a compliance order and notice of potential penalty to INEOS Oxide on January 6, 2015 in Enforcement No. WE-CN-14-00900 ("the 2015 Compliance Order"). The violations identified in the order related to a self-audit that INEOS Oxide conducted in 2014, which revealed a number of problems, including (A) allowing discharges from four unpermitted waste streams, (B) failing to review and update the Facility's Storm Water Pollution Prevention Plan, (C) failing to properly maintain flow-monitoring equipment at Outfall 185, and (D) failing to follow proper sampling and analysis procedures related to sample holding times and use of clean sampling equipment.

In a settlement agreement that INEOS Oxide executed on December 7, 2015, the company ultimately agreed to pay a penalty of $13,648.12, including $648.12 in enforcement costs. The subject matter of the settlement agreement related solely to the allegations in the 2015 Compliance Order. The settlement agreement did not have the effect of resolving any violations subsequent to the 2015 Compliance Order. Nor did it have the effect of resolving any earlier violations outside the scope of the 2015 Compliance Order.

Specifically, none of the violations described below were included within the 2015 Compliance Order.[4] Accordingly, neither LDEQ's 2015 enforcement action nor the settlement thereof can preempt the citizen suit contemplated by this notice letter.

V. Specific Violations

Rather than learning from the results of its self-audit and LDEQ's subsequent enforcement proceeding, INEOS Oxide has become a repeat violator by (A) exceeding numerical effluent limitations in 12 instances, (B) failing to comply with monitoring and reporting requirements on multiple occasions, and (C) allowing careless operations to result in the spill of a hazardous chemical.

The violations documented in this notice are based on a review of discharge monitoring reports ("DMRs"), permits, and other documents maintained in LDEQ's Electronic Document Management System ("EDMS") and associated with Agency Interest Number 89237.

A. INEOS Oxide has repeatedly violated numerical effluent limitations at Outfall 185 and Outfall 183.

The LPDES Permit requires monthly monitoring of certain parameters associated with Outfall 185 and Outfall 183. The permit describes Outfall 185 as follows:

> the continuous discharge of cooling tower blowdown, cooling tower drift, and air compressor blowdown; and the intermittent discharge of process area stormwater,

[4] In November 2015, an inspector for LDEQ identified the pH excursions for June, July, August, and September 2015 but nonetheless declined to take enforcement action.

> plant washdown, T/T loading area stormwater, miscellaneous wastewater (comprised of car wash flushing, safety shower and eye wash flush water, and fire deluge and hydrant test water), other utility wastewaters (comprised of steam condensate blowdown, air compressor condensate blowdown, and steam trap drainage), and previously monitored discharges from Internal Outfall 101.

Likewise, the permit describes Outfall 183 as follows:

> the intermittent discharge of miscellaneous wastewater comprised of maintenance wastewater, safety shower and eye wash flush water, fire deluge and hydrant testing water, low-contamination potential stormwater runoff from the product storage area(s) and material laydown yard, utility wastewater comprised of steam trap drainage, and previously monitored discharges from Internal Outfall 101.

All of these waste streams associated with Outfall 185 and Outfall 183 eventually discharge into subsegment 070301 of the Mississippi River, after first combining with other waters in the Dow Chemical Division Canal.

The permit contains numerical limitations for each monitored constituent associated with Outfall 185 and Outfall 183, including but not limited to biochemical oxygen demand ("BOD"), pH, total suspended solids ("TSS"), and total organic carbon ("TOC"). Compliance with numerical standards is essential to avoiding actual harm to the environment of the Mississippi River and surrounding communities. In particular, BOD "measures the amount of oxygen consumed by microorganisms in decomposing organic matter in stream water," and "the chemical oxidation of inorganic matter (i.e., the extraction of oxygen from water via chemical reaction) . . . The greater the BOD, the more rapidly oxygen is depleted in the [waterbody]. This means less oxygen is available to higher forms of aquatic life. The consequences of high BOD are the same as those for low dissolved oxygen: aquatic organisms become stressed, suffocate, and die."[5] In addition, TOC measurements are indicative of overall water quality. Further, rivers have an "optimum pH . . . around 7.4," and "[e]xtremes in pH can make a river inhospitable to life."[6]

The following chart documents exceedances of effluent standards by the Facility at Outfalls 185 and 183:

Monitoring Period	Constituent	Standard	Result	Outfall
12/01/2016-12/31/2016	BOD	37, average	53.3	185
12/01/2016-12/31/2016	BOD	99, daily maximum	53.3	185
12/01/2016-12/31/2016	TOC	50, daily maximum	62.3	183
10/01/2016-10/31/016	BOD	37, average	51.8	185
10/01/2016-10/31/016	BOD	99, daily maximum	51.8	185

[5] https://archive.epa.gov/water/archive/web/html/vms52.html
[6] https://www.grc.nasa.gov/www/k-12/fenlewis/Waterquality.html

08/01/2016-08/31/2016	TOC	50, daily maximum	68.7	183
03/01/2016-03/31/2016	pH	9, maximum	9.4	185
02/01/2016-02/29/2016	pH	9, maximum	9.16	185
09/01/2015-09/30/2015	pH	9, maximum	9.2	185
08/01/2015-08/31/2015	pH	9, maximum	9.2	185
07/01/2015-07/31/2015	pH	9, maximum	9.3	185
06/01/2015-06/30/2015	pH	9, maximum	9.09	185
368	**Total Days in Violation**			

The exceedances detailed above provide evidence of the following permit violations:

1. Violation of the duty to comply in Part III.A.2 of the LPDES Permit;

2. Failure to "take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment," and to "take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge" (LPDES Permit, Part III.B.2, Duty to Mitigate);

3. Failure to "at all times properly operate and maintain all facilities and systems of treatment and control" (LPDES Permit, Part III.B.3.a, Proper Operation and Maintenance); and

4. Failure to ensure "adequate operating staff which is duly qualified" with regard to operation of treatment and control devices (LPDES Permit, Part III.B.3.b, Proper Operation and Maintenance).

B. INEOS Oxide has failed to follow required effluent sampling and reporting procedures at Outfall 185 and Outfall 183 on multiple occasions.

As noted above, INEOS Oxide is responsible for conducting monthly monitoring at Outfall 185 and Outfall 183, for all constituents identified in the permit. INEOS Oxide must submit regular DMRs to LDEQ with its monitoring data. Accurate monitoring and reporting are important for ensuring that receiving waters remain free of unpermitted pollution. DMRs paint a picture of INEOS Oxide's compliance or lack of compliance with all permit conditions, and place regulators and the public on notice of potential threats to human health and the environment.

When INEOS Oxide fails to monitor, any exceedance that occurred during that interval would go unnoticed and unreported. Any resulting harm to the environment would go unmitigated, and the public would receive no health-and-safety warning to limit their use of the affected segment of river. In addition to the importance of TOC and pH discussed above, TSS

levels determine whether the river has suffered decreased photosynthesis and water clarity and increased water temperatures, which are harmful to the health of aquatic habitats. Suspended solids can also clog fish gills.[7] Likewise, oil and grease can be toxic to aquatic life.

According to the NPDES Permit Writers Manual, more frequent monitoring is especially important where there is "[a] highly variable discharge" with regard to pollutant concentration and flow.[8] INEOS Oxide's discharges at Outfalls 185 and 183 have shown high variability, with pH, for example, ranging from a low 6 to 9.4. Likewise, "[a] facility with problems achieving compliance generally should be required to perform more frequent monitoring to characterize the source or cause of the problems or to detect noncompliance." *Id.* INEOS Oxide has a history of noncompliance with numerical effluent limitations at Outfalls 185 and 183, as documented above, which further illustrates the importance of proper monitoring and the seriousness of its failure-to-sample and failure-to-report violations.

In particular, the chart below reflects the following monitoring and sampling violations:

Monitoring Period	**Constituent**	**Standard**	**Result**	**Outfall**
10/01/2015-10/31/2015	TOC	50, daily maximum	improper sampling	183
10/01/2015-10/31/2015	Oil & Grease	15, daily maximum	failure to sample	183
06/01/2015-06/30/2015	pH	6, minimum	failure to sample	183
06/01/2015-06/30/2015	pH	9, maximum	failure to sample	183
02/01/2015-02/28/2015	TSS	39, monthly average	failure to sample	185
02/01/2015-02/28/2015	TSS	128, daily maximum	failure to sample	185
01/01/2015-01/31/2015	pH	6, minimum	improper sampling	183
01/01/2015-01/31/2015	pH	9, maximum	improper sampling	183
01/01/2015-01/31/2015	Flow	Report, monthly average	failure to sample	183
01/01/2015-01/31/2015	Flow	Report, daily maximum	failure to sample	183
302	**Total Days in Violation**			

The violations identified above provide evidence of additional permit violations, as follows:

1. Violation of the duty to comply in Part III.A.2 of the LPDES Permit;

2. Failure to "take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment," and to "take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit, including such accelerated or additional monitoring as necessary

[7] http://www.fondriest.com/environmental-measurements/parameters/water-quality/turbidity-total-suspended-solids-water-clarity/#Turbid5

[8] NPDES Permit Writers Manual 8.1.3 (September 2010).

to determine the nature and impact of the noncomplying discharge" (Commercial Permit, Part III.B.2, Duty to Mitigate);

3. Failure to "at all times properly operate and maintain all facilities and systems of treatment and control" (Commercial Permit, Part III.B.3.a, Proper Operation and Maintenance);

4. Violation of the requirement in Part III.D.4 of the LPDES Permit, that "[m]onitoring results shall be reported at the intervals and in the form specified . . . in this permit"

5. Failure to ensure "adequate operating staff which is duly qualified" with regard to monitoring and reporting requirements (LPDES Permit, Part III.B.3.b, Proper Operation and Maintenance).

C. INEOS Oxide failed to take steps necessary to prevent—and is otherwise responsible for—the discharge of an unpermitted pollutant.

On June 9, 2015, "due to a mistake while filling [a] rail car," INEOS Oxide spilled at least 205 pounds[9] of Dowanol PM Glycol Ether at its Facility. The reportable quantity for this substance is 100 pounds, and the chemical is considered hazardous due to flammability. The spill occurred from an above-ground storage tank that was overfilled due to careless operation. After initial capture in a secondary containment area, the spill necessitated corrective action involving 150,000 pounds of comingled storm water, which vacuum trucks transported to an internal sump that pumped the contaminated wastewater through the Dow Wastewater Treatment System and, ultimately, into the Mississippi River.

This incident provides evidence of the following violations:

1. Violation of the duty to comply in Part III.A.2 of the LPDES Permit;

2. Failure to "take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment" (LPDES Permit, Part III.B.2, Duty to Mitigate);

3. Failure to "at all times properly operate and maintain all facilities and systems of treatment and control" (LPDES Permit, Part III.B.3.a, Proper Operation and Maintenance);

[9] In its initial incident report, INEOS Oxide represented to LDEQ that approximately 1,000 pounds had spilled. INEOS Oxide later claimed that its initial estimate was incorrect.

4. Failure to ensure "adequate operating staff which is duly qualified" with regard to operation of treatment and control devices (LPDES Permit, Part III.B.3.b, Proper Operation and Maintenance);

5. Discharging an unpermitted pollutant in violation of Part II.A of the LPDES Permit, which "does not in any way authorize the permittee to discharge a pollutant not listed or quantified in the application or limited or monitored for in the permit";

6. Noncompliance with the terms of INEOS Oxide's Storm Water Pollution Prevention Plan, which is "an enforceable Part of the permit" (LPDES Permit, Part II.K.3);

7. Failure to properly cleanup and dispose of spilled product in accordance with all applicable regulations, Spill Prevention and Control plans, or Spill Prevention Control and Countermeasures plans (LPDES Permit, Part II.K.5.b); and

8. Failure to maintain "[a]ll equipment, parts, dumpsters, trash bins, petroleum products, chemical solvents, detergents, or other materials exposed to stormwater . . . in a manner which prevents contamination of stormwater by pollutants" (LPDES Permit, Part II.K.5.c).

VI. Remedies

In accordance with Section 505(b) of the Act, 33 U.S.C. § 1365(b), LEAN and LMR hereby give formal notice of their intent to file suit against INEOS Oxide and Dow in federal court, after the expiration of 60 days from the date of this notice. Copies of this notice are being provided to the State of Louisiana, through its Department of Environmental Quality, the U.S. Department of Justice and the United States Environmental Protection Agency.

Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the regulation allowing for the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects INEOS Oxide and Dow to a penalty of up to $37,500 per day per violation for all violations occurring before November 3, 2015, and up to $52,414 for violations occurring after November 2, 2015. This means that the maximum potential penalty for the 670 days of numerical standard and reporting violations alone exceeds $25,000,000. In addition to civil penalties, LEAN and LMR will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) of the Act, 33 U.S.C. §1365(a), and requiring INEOS Oxide and Dow to remediate any damage to the Mississippi River. Finally, LEAN and LMR will seek to recover costs and fees associated with this action, including attorneys' fees, as allowed for prevailing parties under Section 505(d) of the Act, 33 U.S.C. § 1365(d).

VII. Conclusion

LEAN and LMR hope INEOS Oxide and Dow will take prompt action to remedy the violations identified in this notice letter, and will meet with INEOS Oxide and Dow to further discuss methods of compliance and answer any questions INEOS Oxide and Dow may have. Please direct all correspondence to the undersigned counsel, via the address and telephone number below.

Sincerely,

Robert Wiygul
1011 Iberville Dr.
Ocean Springs, MS 39564
Phone: (228) 872-1125

cc: **Certified Mail & Return Receipt Requested**
Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Certified Mail & Return Receipt Requested
Scott Pruitt, EPA Administrator
Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0003

Certified Mail & Return Receipt Requested
Samuel Coleman, EPA Region VI, Acting Regional Administrator
Environmental Protection Agency
Fountain Place 12th Floor, Suite 1200
1445 Ross Avenue
Dallas, TX 75202-2733

Certified Mail & Return Receipt Requested
Chuck Carr Brown, Secretary Louisiana DEQ
P.O. Box 4301
Baton Rouge, LA 70821-4301